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DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 00-0419
GROSS INCOME TAX
FOR TAX PERIODS: 1996-1997

Issue

Gross Income Tax: Gross Receipts

Authority: IC 6-2.1-2-2, IC 6-2.1-4-2, 45 IAC 45-1-1-17.

The taxpayer protests the assessment of gross income tax on receipts which the taxpayer claims constitute exempt agency receipts.

Statement of Facts

The taxpayer is an association of retailers. After a routine audit, the Indiana Department of Revenue, hereinafter referred to as the "department," assessed additional income tax. The taxpayer protested the assessment and a hearing was held. Further facts will be provided as necessary.

Gross Income Tax: Gross Receipts

Discussion

The taxpayer publishes two magazines. When the taxpayer agrees to sell an advertisement in a particular magazine, it sends a confirmation to the advertising agency involved. That confirmation shows the gross cost of the advertisement, the advertising agency commission of fifteen per cent (15%) and the net billing for the advertisement. Later the taxpayer sends an invoice to the advertising agency with the same information. Either the advertising agent or the advertiser pays the taxpayer by check. The advertisers pay the advertising agency's percentage of the bill directly to the advertising agency. The taxpayer never receives a check or other compensation for the advertising agency commission. Due to its accrual accounting method, the taxpayer records the total price of the advertisement in its books, with separate entries for the advertising agency commission and the actual cost for the publication of the advertisement.

The department imposed gross income tax on the advertising agency commissions. The taxpayer protested this assessment.

IC 6-2.1-2-2 imposes a gross income tax on the gross income or gross receipts of taxpayers domiciled in Indiana. The term "gross receipts" is clarified in the applicable 1988 Regulations at 45 IAC 1-1-17 as follows:

> Gross Income Defined. "Gross income" and "gross receipts" mean the entire amount of gross income received by a taxpayer. This includes all income actually or constructively received, i.e., monies credited to the taxpayer by his creditors, or paid to his creditors on his behalf by a third party.
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> Amounts received or credited include not only cash and checks but notes or other property of any value or kind, services of any value or kind and receipts in any form received by or credited to the taxpayer in lieu of cash.
>
> The taxpayer is required to report his entire gross income in order to determine its taxability. From this amount he may take deductions as allowed under the Act.

The taxpayer contends that it never actually or constructively receives the money or any other services, receipts in kind or any other type of credit for the advertising agency's fifteen per cent (15%) of the total billing. Therefore, the advertising agency fee does not qualify as gross receipts subject to gross income tax.

In accordance with its accrual accounting method, the taxpayer actually records the total amount as a receipt. Additionally, the recorded amounts are constructively received gross income since a third party satisfies the taxpayer's obligation to the ad agency. As such, the recorded amounts are gross income as contemplated by the law and regulation. The law provides for certain deductions from gross income for tax purposes such as a deduction for bad debts pursuant to IC 6-2.1-4-2. However, the law provides no deduction for commissions.

The department properly imposed gross income tax on the commissions.

<u>Finding</u>

The taxpayer's protest is denied.

KA/JM/MR--023110